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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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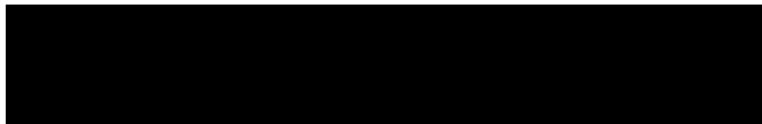


File: WAC-01-055-50790

Office: California Service Center

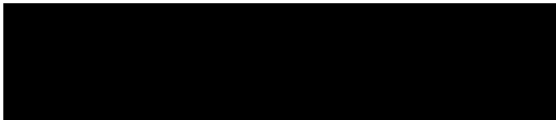
Date: JAN 22 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a health care facility with 84 employees and an approximate gross annual income of \$3.4 million. It seeks to employ the beneficiary as a utilization review coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not established that baccalaureate level training is a normal requirement for entry into the occupation. On appeal, counsel argues in part that the employer requires a Bachelor of Science degree in Nursing (BSN) for the proffered position.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will analyze the patient or client's medical history to determine legitimacy of admission, treatment and length of stay in health care facility. [The beneficiary] will analyze patient records to determine compliance with government and insurance company health insurance and reimbursement policies. She will review facility's internal policies and procedures regarding admission, treatment, emergencies, staff responsibilities, criteria for continued confinement,

exit/release requirements, maintenance of services. She will set admission criteria and review applications for patient admission, and she will recommend appropriate action on application. [The beneficiary] will also review inpatient medical records against established criteria and she will recommend appropriate changes or policy actions. She will confer with facility management, including medical and other professional staff, regarding streamlining admission requirements and procedures, improving treatment procedures and priorities, and determining continuance of health care/treatment.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The Service does not agree with counsel's argument that a BSN degree is a minimum requirement for employment as a utilization review coordinator. In these proceedings, the duties of the position are dispositive and not the job title. The duties of the proffered position fall within the normal range of duties of registered nurses as described in the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 211-212. The Handbook does not indicate that there is a requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. The three educational paths to nursing are as follows: Associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma. The Handbook further states that:

There have been attempts to raise the educational requirements for an R.N. license to a bachelor's degree and, possibly, create new job titles. These changes, should they occur, will probably be made State by State, through legislation or regulation...In fact, many career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is usually necessary for administrative positions and is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

Counsel asserts on appeal that the degree requirement is common to the industry in parallel positions among similar organizations and submits six job advertisements in support of his assertion. One of the prospective employers is seeking an R.N. but does not indicate that a BSN is required for the position; three employers indicate that a BSN is preferred; one employer states that a successful candidate for the position should have an R.N., B.S. or M.S.; and one employer seeks a registered nurse with a BSN or related degree. Clearly, most employers prefer to employ registered nurses with a BSN for positions similar to the proffered position, but the petitioner has not shown that a BSN is a common requirement for similar positions at other health care facilities.

Counsel asserts on appeal that the petitioner normally requires its utilization review coordinators to hold a bachelor's degree in nursing or a related field. In support of his assertion, counsel submits a job listing for a Utilization Review Coordinator at another care center owned by Fountain View Management. According to the job listing, the petitioner will accept applicants with a bachelor's degree in a variety of different fields. Thus, it does not appear that the petitioner requires a bachelor's degree in a specific, specialized area for the proffered position.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether those petitions were approved in error or whether the facts and conditions have changed since their approval. Furthermore, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

Finally, the Service does not agree with counsel's argument on appeal that the duties of a utilization review coordinator are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As stated above, the duties of the proffered position appear to fall within the normal range of duties of registered nurses as described in the Handbook.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.